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March 5, 2007

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To Whom It May Concern:

Under CCR title 22, section 66271.18, I am filing a petition for review regarding the pending DTSC permit for the Industrial Service Oil Company Inc. hazardous waste facility expansion of the facility located at 1700 S. Soto Street in Los Angeles City Council District 14.

I have standing under CCR title 22, section 66271.18(a) to file this appeal as a previous maker of comments for the record during the draft EIR/ draft permit stage. Some statements made below are made based on:

1. A finding of fact or conclusion of law that is clearly erroneous, or
  2. An exercise in discretion or an important policy consideration which DTSC should review.
- Other comments contained herein are related to comments previously submitted to DTSC during the initial comment period.

**BOYLE HEIGHTS COMMUNITY PLAN OBJECTIVES**

The FINAL ENVIRONMENTAL IMPACT REPORT dated December 2006 indicates in Section 3.2.2 REGULATORY BACKGROUND that the Boyle Heights Community Plan has the objective to preserve industrial land for industrial uses. That is a myopic view of the Community Plan, but is a moot point due to the fact that Boyle Heights Community Plan is currently being rewritten as one of the seven community plans being entirely revamped by the Department of City Planning.

The newly rewritten Boyle Heights Community Plan will incorporate further opportunities for redevelopment and revitalization, transit-oriented development and industrial / residential mixed use, in addition to significant incorporation of the community with the Los Angeles River and the implementation of urban design guidelines.

This policy information was not known at the time of the original assessment and DTSC should most certainly consider it.

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## **FUTURE LAND USES**

On Pages 34-35 of the Final Health Risk Assessment for this proposed permit, dated December 2006, Environmental Audit, Inc indicates: *"Uncertainties regarding the current and future land use of the site are expected to be minimal, since the area surrounding the ISOCI facility is expected the remain industrial. Encroachment by residential towards to ISOCI facility is expected to be limited to the Sears Building site at the corner of Olympic Boulevard and Soto."*

This is a factual error and makes presumptions for the City of Los Angeles and the Community Redevelopment Agency about future land uses in an area that has been clearly identified in public policy for redevelopment and which is currently undergoing a complete overhaul of its Community Plan.

It is also notable that the Gold Line expansion is being built along a major transit corridor in Boyle Heights and Transit-Oriented Development is being planned and promoted which could easily have a residual affect on the development in this area.

Furthermore, and of paramount importance, is the fact that the City of Los Angeles recently announced the Los Angeles River Master Plan which will revitalize the Los Angeles River, offer connectivity and access from communities all along the historic water channel and provide opportunities to reassess zoning and planning needs in areas near and adjacent to the River. This facility is directly adjacent to the Los Angeles River.

## **POPULATION, HOUSING AND CULTURAL RESOURCES**

In the FINAL ENVIRONMENTAL IMPACT REPORT dated December 2006, there are erroneous statements of fact. In Chapter 3-1 ENVIRONMENTAL ANALYSIS the report states population, housing and cultural resources are considered less than significant resources in this area. Boyle Heights is a neighborhood rich in history and culture, as the homesite for generations of immigrant populations, and the birthplace of national leaders.

Population and housing resources in the area are significant, with a number of apartment and housing units located only .25 miles away from the project site on Olympic Boulevard, north of the project site. Additionally there are more than a dozen schools within a one-mile radius, along with places of worship, and a number of public facilities. Future housing and residential uses, including the Sears building, have been identified by the Community Redevelopment Agency within the project area as a target site for residential / mixed-use development. This area's importance in the long-term planning and redevelopment cannot be overestimated.

As mentioned above, the Los Angeles River, through the LA River Master Plan, will undergo a tremendous revitalization in the next decades, represented by many millions of dollars of funding to reinvigorate the river's corridors, encourage connectivity, open space and utilization of river resources. There could be no cultural resource more important to the area than the revitalization of the City's namesake river.

Furthermore, the City of Los Angeles is undertaking an extensive Historic Resources Survey of the entire Boyle Heights area. The need and justification for such a study would be non-existent in the alleged absence of cultural resources in the vicinity.

## **NOx EMISSIONS MITIGATION OPTIONS**

In Attachment 1 - Statement of Findings; Overriding Considerations; and Mitigation, Monitoring and Reporting Plan, Section 1, DTSC indicates the project impacts due to the operation of this facility would exceed significance thresholds for nitrogen oxide emissions (NOx) and will remain significant. The impacts of the overlap of construction emissions with the facility operations are also significant for NOx. DTSC indicates mitigation measures will not reduce NOx emissions from trucks and railcar activities

below the significance threshold and that no other feasible mitigation measures or project alternatives have been identified.

In fact, in the same document, DTSC indeed identifies two project alternatives, which are the No Project Alternative (redaction of all permission to operate) and the Reduced Operations Project Alternative (continuing the current operations without expansion or increased operations).

The FINAL ENVIRONMENTAL IMPACT REPORT dated December 2006, Chapter 4: Project Alternatives Section 4.4 - REDUCED OPERATIONS - states that the Reduced Operations Alternative would be the environmentally superior alternative, and would *"reduce the likelihood of a truck accident involving a spill from an estimated one accident every 5.7 years under the proposed project, to about one every 12.5 years."*

Section 4.5 of the same chapter states: *"Analysis shows that the reduced operations alternative would be the environmentally superior choice... the reduced operations alternative would reduce overall project impacts."*

This is a factual error and draws an erroneous conclusion. It is a matter of plain logic that the impacts of a proposed expansion from 2.7 acres to 5.34 acres, which would more than double the number of truck and railcar trips per day could very reasonably be mitigated by not allowing the increase.

In Attachment 1 - Statement of Findings; Overriding Considerations; and Mitigation. Monitoring and Reporting Plan, Section 2, DTSC finds that operational emissions of CO, VOC, NOx, SOx, and PM10 associated with the ISOCI and other cumulative projects could result in significant air quality impacts.

DTSC states no other feasible mitigation measures have been identified. Again, in its own document, DTSC indicates that not allowing the facility to expand its operations is the environmentally superior alternative, so it is a factual error to indicate no other mitigations measures have been identified.

## **COMPLIANCE ISSUES & BURDEN ON CITY EMERGENCY & LIFE SUPPORT RESOURCES**

During inspections conducted May of 1992, February 1993, September 1993 and July 1994, ISOCI was cited for violations which included non-compliance with air emissions standards for equipment leaks; failure to test all recycled oil using an approved method; and operating with materials outside the scope of their permit.

Furthermore, an RCRA Facilities Assessment conducted in 1994 had concluded the facility had contaminated soil from leaks in two locations. The ISOCI entered into a consent agreement with DTSC on April 12, 1996 to make corrections, and when ISOCI was re-inspected on April 23, 1996, ISOCI was cited for five other violations including failure to provide adequate secondary containment; not performing leak tests on tanks; and storing hazardous waste beyond the time allowed.

With significant compliance issues on their record as a simple oil and anti-freeze recycling facility, it does not seem prudent to allow the expansion of this facility for processing and long-term storage of a significantly wider range of hazardous and toxic materials including hazardous wastewater, sludge, and a myriad of other chemical contaminants which are known to be hazardous, cancer-causing agents.

The DTSC is erroneous in its assessment that the ISOCI is equipped to handle these toxins in a safe manner, and I appeal to the DTSC to revoke the pending approval of this permit. Furthermore, Finding 2, Under B.- Potentially Significant Impacts Which Can Be Mitigated to a Level of Insignificance is inaccurate because the mitigation measures proposed for the use of additional chemicals at the site are not under the jurisdiction of the DTSC as stated. Hazardous materials disclosure, hazardous waste storage, labeling and emergency response planning are under the jurisdiction of the Certified Unified Program Agency (CUPA). The additional inventories of hazardous materials in the form of reagents, maintenance

chemicals, laboratory chemicals, sample storage and other chemicals on site will managed by local regulatory programs of the City and County as well as the responsibility for responding to incidents involving chemical spills.

The City of Los Angeles, not the DTSC, will be the agency called upon to bear the burden of what I believe could be a grave mistake in the issuance of this permit.

Title 22 of the California Code of Regulations Section 66264.51 - 66264.56 requires a Contingency Plan and Emergency Response Procedures. The ISOCI emergency response protocol as outlined in its Project Description includes emergency response service from the Los Angeles Police Department and Los Angeles Fire Department.

LAFD Fire Stations # 17, 14, 25 and 4 are listed as the relevant emergency responders for the ISOCI facility and the Hollenbeck Police Station is listed for the LAPD. Indeed, the City of Los Angeles would most certainly be required to provide the first and most critical responders in the event of a spill or serious accident, but yet the City of Los Angeles has had no jurisdiction over the granting of this permit.

In fact in its own RESPONSE TO COMMENTS FINAL ENVIRONMENTAL IMPACT REPORT dated December 2006, on page 195, in response to a comment raising the concern about an evacuation procedure and timing for the safe evacuation of nearby schools, businesses and residents in the event of a spill, the DTSC offers response 17-2 which indicates evacuation plans are outside the scope of the DTSC's jurisdiction and directs the concerned commenter to contact the Los Angeles Fire Department for further information.

The DTSC acknowledges that the expanded facility could experience one truck spill every six years. Boyle Heights is a densely populated, urban area and the risk to the health and wellbeing of the families, school children and laborers in the area is significant in the event of a major accident.

The people of Los Angeles and the life support and emergency response systems of our City would bear the burden in the event of a spill, yet to this date the City has had no legal jurisdiction over the permitting process. The location of this facility near the Los Angeles River makes a potential spill a threat to the entire region.

Even if the risks of a major regional disaster related to the facility are "less than significant," that is not a risk the City should be forced to consider without having had any jurisdiction whatsoever over the permitting process.

### **CREATION OF COMMUNITY REDEVELOPMENT AGENCY PROJECT AREA**

Since ISOCI's initial application to DTSC, the City of Los Angeles has created the Community Redevelopment Agency (CRA) Eastside Adelante Project Area which encompasses the subject property.

Per Redevelopment Plan Section 408.4 p. 15 *"All development plans (whether public or private) shall be submitted to the Agency for approval and architectural review. All development in the Project Area must conform to this Plan, applicable design guidelines and all applicable federal, State and local laws, and must receive approval of the appropriate public agencies."*

The CRA has not had the opportunity to review the development plan concerning the Project Area, but has indicated to me that the proposed expansion of the ISOCI facility conflicts with a number of the goals, objectives and specific requirements of the Redevelopment Plan, especially in terms of the agency's mission to improve the quality of the environment, which includes an emphasis on industrial uses that are environmentally safe.

The proposed expansion poses significant environmental risks which are not appropriate under the CRA's objectives, nor for the well-being of the people of the City of Los Angeles.

## LOCAL LAND USE DISCRETION / TANNER ACT

Part III GENERAL CONDITIONS of Hazardous Waste Facility Permit, Attachment "A" Part 2(a) indicates *"The Permittee shall obtain the permits required by other governing agencies, including but not limited to, the applicable land use planning, zoning, hazardous waste, air quality, and solid waste management laws for the construction and / or operation of the Facility."*

Part V SPECIAL CONDITIONS WHICH APPLIES TO THE ENTIRE FACILITY'S STORAGE AND/OR TREATMENT UNIT(S) Part C(u) indicates: *"The facility shall not begin construction of any proposed hazardous waste units until it obtains all permits required by all state and local regulatory agencies. Pursuant to California Health and Safety Code Section 25199.3(a) the permit for the proposed units shall not become effective until the applicant is granted a local land use permit."*

The Tanner Act is found at Health and Safety Code sections 25199-25199.14.

Health & Safety Code Section 25199.7 states *"A notice of Intent filed with a local agency shall be accompanied by a fee which shall be set by the local agency in an amount equal to the local agency's cost of processing the notice of intent and carrying out the notification requirements of this subdivision. A notice of intent is not transferable to another location other than the location specified in the notice and shall remain in effect for one year from the date it is filed with a local agency, or until it is withdrawn by the proponent, whichever is earlier."*

In the FINAL ENVIRONMENTAL IMPACT REPORT dated December 2006, section 3.7.4.2 Conflict with Applicable Plans, Policies, or Land Use Regulations, the report indicates ISOCI has submitted a Notice of Intent. This is an erroneous statement of fact.

In December 1995, ISOCI was represented in a letter from JRJ Associates to the then-Deputy Director of the City of Los Angeles Department of City Planning. The letter incorporated a Notice of Intent to apply for a specified hazardous waste project under California Health and Safety Code Section 25199.7. Health and Safety Code section 25199.7(d) states the legislative body of the affected local agency (the City Council) shall appoint the LAC *"any time after the notice of intent is filed with the local agency but shall be appointed not later than 30 days after the application for the land use decision is accepted as complete by the local agency."*

ISOCI filed a conditional use permit application to modernize its facility on August 1, 1996, under City Plan Case number 1996-0288-CU. However, no action was taken by the applicant subsequent to a Planning Department letter dated March 12, 1997 advising that a radius map and notification list would be required in accordance with Department policy. In a final written communication dated Dec. 20, 2004, the 1996 case was terminated and the Planning Department informed the applicant that it would be necessary to file a new application and pay the required fees to pursue the matter in the future.

Furthermore, the 1996 ISOCI application did not include the additional 2.64 acre parcel which ISOCI acquired in 2003, located south of the existing 2.2 acre parcel. Therefore, per Health and Safety Code section 25199.7, which states *"A notice of intent is not transferable to a location other than the specific location specified in the notice..."* even if the application had not been terminated due to the applicant's lack of response, the previously filed Notice of Intent is invalid for the currently proposed expansion, which is proposed to span both parcels.

## MISREPRESENTATION BY THE APPLICANT

Under the Local Approvals Section, ISOCI indicates it will *"apply for a Conditional Use Permit prior to completion of the EIR."* However, ISOCI did NOT apply for its local land use permit before the completion of the EIR which I am significantly persuaded is an attempt to rob the people of Los Angeles from full and fair participation in reviewing and advising on the terms of the permit through a Local Assessment Committee (LAC).

The EIR process has already been conducted and the applicant has failed to file a valid Notice of Intent to apply to the City of Los Angeles for any conditional use permit for the relevant operation and /or expansion of their facility.

More than 11 years has passed since the ISOCI filed its notice of intent to apply for a City of Los Angeles Conditional Use Permit which was never acted upon and was deemed terminated.

Therefore, the City of Los Angeles is not now, nor has it been for the past decade, in the position to initiate an LAC under the Tanner Act, which in turn means the people of our City have not had the fullest opportunity to comment on the parameters of the permit and be a part of developing potential mitigation measures and conditions thereto.

~~In order to address the required City process with the applicant, and discuss the ISOCI's plans, my Planning Director, upon my direction, called for a meeting between ISOCI and the City of Los Angeles last month. The ISOCI applicant was not able to attend, and failed to reschedule at any later date.~~

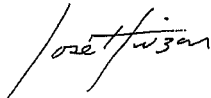
The fact that ISOCI and has, to date, (1) failed to act on clear direction that a conditional use permit from the City of Los Angeles will be required; (2) has failed to file a Notice of Intent for the current scope of the project, and (3) has failed to schedule a meeting to discuss their status and City requirements is of great concern to me.

In the Hazardous Waste Facility Permit, Attachment "A", Part III GENERAL CONDITIONS Section 2 (a) DTSC states: *"The Permittee shall obtain the permits required by other governmental agencies, including but not limited to, the applicable land use planning, zoning, hazardous waste, air quality, and solid waste management laws for the construction and / or operation of the Facility."* In the same Part III, Section 2 (f) DTSC states *"failure to submit any information required in connection with the Permit, or falsification and / or misrepresentation of any submitted information, is grounds for revocation of this Permit."* (Cal. Code Regs., title 22 section 62270.43.)

The fact that ISOCI very clearly states in their Project Description that it **will "apply for a Conditional Use Permit prior to completion of the EIR"** should suffice to show the ISOCI intended to misrepresent itself and its intentions to the DTSC, the City of Los Angeles and the people of the 14th Council District, and therefore the pending approval of this permit should be revoked.

Thank you for your consideration. If you should have any questions about this matter, please contact me or my Planning Director, Jessica Wethington McLean at 213-473-7014.

Sincerely,



Jose Huizar  
Councilmember 14<sup>th</sup> District

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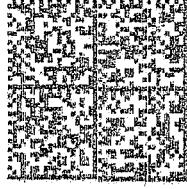
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